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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FLORENCIO JOSE DOMINGUEZ,

Petitioner,

v.

SCOTT KERNAN, Secretary,
California Department of Corrections
and Rehabilitation,

Respondent.

Case No. 14-cv-2890-BAS-RBB
ORDER:

**(1) CONVERTING PETITION;
(2) ORDERING PETITIONER
TO FILE A SUPPLEMENT TO
HIS PETITION; AND
(3) GRANTING PETITIONER
LEAVE TO FILE
SUPPLEMENTAL BRIEFING**

On October 23, 2018, the Ninth Circuit issued an opinion determining that Petitioner Florencio Jose Dominguez “is no longer required to proceed under § 2254” and does not need to “dismiss his § 2254 petition and file a new petition under § 2241.” (ECF No. 32.) The Court therefore requested that Petitioner determine whether he elects to convert his Petition under § 2254 to one arising under § 2241. (ECF No. 33.) Petitioner elects to do so and requests leave to provide the Court with supplemental briefing. (ECF No. 34.)


1 Accordingly, the Court converts Petitioner's § 2254 petition to one arising
2 under § 2241. Further, to allow the Court to resolve this converted petition, the Court
3 **ORDERS** Petitioner to file a supplement to his petition. This supplement should:
4 (1) specify all the grounds for relief available to Petitioner under § 2241, (2) state the
5 facts supporting each ground, and (3) state the relief requested. In particular,
6 Petitioner should include the facts regarding his impending retrial on the charge of
7 conspiracy to commit murder.

8 Further, the Court grants Petitioner leave to file a memorandum of points and
9 authorities in support of the supplement to his petition. In his memorandum,
10 Petitioner should include briefing on whether: (1) he has adequately exhausted his
11 double jeopardy claim under § 2241; and (2) the Double Jeopardy Clause bars his
12 prosecution on a charge of conspiracy to commit murder when, assuming he was
13 acquitted, his previous acquittal applied solely to the charge of murder. Petitioner
14 may also address any other issues he deems appropriate. However, the Court does
15 not need additional briefing regarding whether the state trial court's dismissal of
16 Petitioner's first prosecution was an "acquittal" under federal law. That issue has
17 already been extensively addressed by the parties.

18 Petitioner shall file the supplement to his petition and any accompanying
19 memorandum no later than **January 11, 2019**. The Court will then set a deadline for
20 the State to respond to the converted petition.

21 **IT IS SO ORDERED.**

22
23 **DATED: December 12, 2018**


Hon. Cynthia Bashant
United States District Judge